

Remarks

Status of the claims

By the foregoing amendments, claims 45-70 have been added, and claims 1 and 14-44 have been cancelled. Upon entry of the foregoing amendments, claims 45-70 will be pending in the present application. Support for the new claims may be found throughout the specification and the original claims, for example at page 9, line 37; page 9, line 28; and page 8, line 4. No new matter is introduced by these amendments.

Response to Restriction Requirement

The application presently contains claims 45-70. In the Office Action dated March 20, 2001, the Examiner required restriction to one of the following inventions under 35 U.S.C. § 121:

Group I: Claims 1, 14, 23-29, and 33-44, drawn to a method for producing an expression product of a mammalian gene, plant matter, and dicotyledonous plant cells, classified in class 435, subclass 419, for example.

Group II: Claims 15-22, 29, and 30-32, drawn to an expression product of a mammalian gene, classified in class 435, subclass 300, for example.

The restricted claims have been cancelled; however, it is presumed that the Examiner would impose a similar restriction requirement on the newly submitted claims. Accordingly, it is Applicants' belief that because claims 62-70 are drawn to expression products of mammalian genes, they would be included in Group II. In the event that Applicants' understanding of the claim groupings is correct, Applicants provisionally elect Group II (claims 62-70).

In order to facilitate prosecution, Applicants provisionally elect Group II, presented in claims 62-70, drawn to an expression product of a mammalian gene; however, Applicants

respectfully traverse the restriction requirement. Applicants submit that the Patent Office has not proven that the search and examination of the entire application would impose an undue burden. Applicants submit that the complete examination would be handled most expeditiously by treating all of the pending claims as a single entity. As MPEP § 803 directs, “[i]f the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions.” Applicants respectfully submit that the Examiner has not shown that a search and examination of the entire application would cause a serious burden. Rather, a serious burden would arise if the application were restricted.

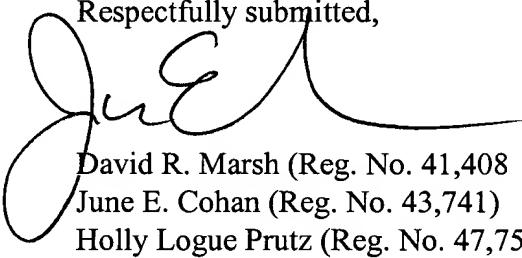
In support of the restriction of Groups I and II, the Examiner contends that “the products can be used in different methods” and that “the products are structurally and functionally distinct from each other.” Office Action of March 20, 2001 at page 2. However, the pending claims are directly related because they all pertain to the methods and results of expressing a mammalian gene in a plant system. Hence, a search in the art for methods of producing the mammalian peptide in a plant system would also yield results of mammalian peptides produced in a plant system without any undue burden on the Examiner. Therefore, Applicants strongly disagree with the restriction requirement imposed by the Examiner with respect to these groups. However, in the event that the Examiner maintains the restriction requirement, Applicants respectfully request reconsideration and rejoining of the subject matter of these groups upon an indication of allowable subject matter in the application.

Based upon the foregoing, Applicants submit that the restriction requirement is improper and therefore must be withdrawn. In order to facilitate prosecution, however, Applicants have provisionally elected, with traverse, the subject matter of Group II (claims 62-70).

Should the Examiner have any questions regarding this application, the Examiner is invited to telephone the undersigned at the number provided.

Applicants do not believe that any fees or extensions of time under 37 C.F.R. § 1.136 are required in conjunction with this submission other than those set forth in the accompanying letter. However, in the event that extensions of time are necessary to prevent the abandonment of this patent application, then such extensions of time are hereby petitioned. The U.S. Patent and Trademark Office is hereby authorized to charge any fee deficiency and/or overpayment to Arnold & Porter Deposit Account Number 50-1824, referencing matter number 16518.076.

Respectfully submitted,



David R. Marsh (Reg. No. 41,408
June E. Cohan (Reg. No. 43,741)
Holly Logue Prutz (Reg. No. 47,755)

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ARNOLD & PORTER
555 Twelfth Street, N.W.
Washington, DC 20004-1206
(202) 942-5000 telephone
(202) 942-5999 facsimile